

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	CIV
)	
Plaintiff,)	COMPLAINT
)	
v.)	JURY TRIAL DEMAND
)	
MOORE & MOORE, INC. and)	
CLAYTON RANCH MARKET, INC.,)	
d/b/a CLAYTON RANCH MARKET,)	
)	
Defendants.)	
)	

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Robert Harris who was adversely affected by such practices. The Commission alleges that Defendants Moore & Moore, Inc. and Clayton Ranch Market, Inc., d/b/a Clayton Ranch Market, discriminated against Robert Harris, a qualified individual with a disability, when it failed to hire him for available positions because of his disability.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Right Act of 1964 (“Title VII”), 42

U.S.C. §2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981A.

2. The employment practices alleged below to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference, Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendants Moore & Moore, Inc. (a New Mexico corporation) and Clayton Ranch Market, Inc. (a Colorado corporation), d/b/a Clayton Ranch Market, (“Defendants” or “Employers”), have continuously been doing business in the State of New Mexico in the town of Clayton and have continuously had at least 15 employees.

5. At all relevant times to this action, Defendant Employers have continuously been employers engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. §12111(5), and Section 101(7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§2000e(g) and (h).

6. At all relevant times, Defendant Employers have been covered entities under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Robert Harris filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Employers. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least April 28, 2008, Defendant Employers have engaged in unlawful employment practices at its Clayton, New Mexico facility by discriminating against Robert Harris in violation of Section 102(a) of the ADA, 42 U.S.C. §12112(a) because of his disability when it failed to hire Mr. Harris.

9. The effect of the practices complained of in paragraph 8 above has been to deprive Robert Harris of equal employment opportunities and otherwise adversely affect his status as an applicant because of his disability.

10. The unlawful employment practices complained of in paragraphs 8 and 9 above were intentional.

11. The unlawful employment practices complained of in paragraphs 8 and 9 above were done with malice or with reckless indifference to the federally protected rights of Robert Harris.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employers, their officers, successors, assigns and all persons in active concert or participation with them, from discriminating against qualified individuals with disabilities because of their disabilities or any other employment practice which discriminates on the basis of disability.

B. Order Defendant Employers to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employers to make whole Robert Harris by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices,

including but not limited to rightful-place hiring of Robert Harris.

D. Order Defendant Employers to make whole Robert Harris by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 8 and 9 above, including emotional pain, suffering, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

E. Order Defendant Employers to pay Robert Harris punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

DATED this 29th day of September, 2009.

Respectfully submitted,

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